

### REMARKS

In regards to the Examiner's rejection of claims 19-24 under 35 U.S.C. 112, second paragraph, Applicants are at a loss as to the basis of this rejection. Claim 19, is a dependent claim depending on Independent claim 17 and it is further limiting this claim 17. Claim 17 is independent and is definite and therefore, Applicants are free to limit this claim to the level they desire, and are not required to add the further limitations suggested by the Examiner. Claim 19 is at the limiting level desired by Applicants as it simply further defines claim 17. While the Examiner may desire that claim 19 fully describes the details of the ditch forming machine, Applicant do not so wish and they are free and it is their right to so claim, and such the claim is definite and Applicants respectfully requests that this basis of rejection be withdrawn. Applicants are also unsure of the meaning of the Examiner's note to Applicants. Applicants are fully aware that the term "of providing" is lacking in claims 19-24, however, the Applicants respectfully draw the Examiner's attention to claim 17 wherein the Applicants provided a ditch forming machine and therefore it is so provided. Claims 19-24 simply further refine and limit the ditch forming apparatus provided in claim 17.

In regard to the Examiner's rejection of claims 1,2,4,8,9,10,12,13,16-18,20,21,24 under 35 U.S.C, 103(a) as being unpatentable over Stillwell in view of Fuller, the rejection of claims 3, and 11 and 19 under 35 U.S.C, 103(a) as being unpatentable over Stillwell in view of Fuller and further in view of Gebhard, the rejection of claims 6,7,14, and 15, and 22 and 23 under 35 U.S.C, 103(a) as being unpatentable over Stillwell in view of Fuller and further in view of Brown, Applicants submit that their invention, as now claimed, is novel and non-obvious in light of the prior art.

Specifically, Applicants' devices uses an extension to screed concrete delivered from the hopper and a skip to help slip form the concrete so screeded. The Stillwell device simply relies on slip formation of the concrete deposited as plate 144 is forward of the hopper and thus forward of the point of deposit of the concrete therefrom. Additionally, the rear plate 12 disclosed in the Fuller patent does not disclose its intended purpose and one cannot be so

presumed. As figure 5 illustrates, the rear plate appears to be a structural support member and not a screeding device. Nevertheless, and assuming *arguendo*, that rear plate 12 is a screeding device, there lacks motivation to combine the teaching of the two devices as the Stillwell device and the Fuller device each appear to rely solely on slip formation of the concrete product being formed.

Additionally, the stanchions of the Applicants' device are different relative to the hydraulic stanchions found on the Gebhard device, which stanchions are intended to raise and lower the Gebhard device with respect to the ditch wherein the device may be found during the forming operation, whereas the Applicants' device, by having stanchions that are spaced apart from the wheels, are designed to provide support for the device when the device is not on its wheels. There exists no motivation or suggestion to combine the wheel based stanchions of the Gebhard device with combined teaching of Stillwell and Fuller

Finally, the H-shaped baffles of Applicants' device are completely different relative to the plates found in the Fuller device which plates are designed to prevent formation of pockets of cement in the corners of the hopper and to insure the prompt feeding action of the concrete from the hopper to the vents. The plates of Fuller are designed to prompt concrete flow, whereas Applicants' baffles are designed to retard concrete flow and the two systems are quite different and therefore, the combined teaching of Stillwell and Fuller do not suggest the baffles claimed by Applicants.

Therefore, Applicant's device is novel and non-obvious in light of the prior art.

As the remaining cited patents are of an incidental nature only, they will not be discussed in detail.

In view of the foregoing remarks and amendments, it is respectfully submitted that this application is now in condition for allowance, therefore an early notice to this effect is courteously solicited

The following claims are amended and in marked up form:

**Claim 1 (amended).**

A ditch forming apparatus comprising:

a hopper having a front end and a rear end joined by a pair of side members, an outer surface, an inner surface, an open top, and an open bottom;

a first frame member attached to the front end of the hopper, the first frame member having a first pair of wheels attached thereto;

a second frame member attached to the rear end of the hopper, the second frame member having a second pair of wheels attached thereto;

an extension extending downwardly from the open bottom proximate the front end, the extension having a pair of sloped side edges joined by a flat bottom edge; and

a skid attached to the rear end, the skid having a pair of sloped side surfaces joined by a flat bottom surface; and

wherein the hopper is adapted to receive concrete therein and deposit the concrete through the open bottom and the extension screeds the concrete so deposited and the skid slip forms the concrete so screeded..

**Claim 3 (amended).**

The ditch forming apparatus as in claim 1 further comprising:

a first pair of stanchions slidably attached to the first frame member in spaced apart fashion and spaced apart from the first pair of wheels, the first pair of stanchions capable of being secured in a fixed position relative to the first frame member; and

a second pair of stanchions slidably attached to the second frame member in spaced apart fashion and spaced apart from the second pair of wheels, the second pair of stanchions capable of being secured in a fixed position relative to the second frame member.

**Claim 8 (amended).**

The ditch forming apparatus as in claim 1 further comprising [a] an H-shaped baffle removably positioned within the hopper in order to retard the flow of the concrete from the hopper through the open bottom.

**Claim 9 (amended).**

A ditch forming apparatus comprising:

a hopper having, a front end and a rear end joined by a first side and a second side, an outer surface, an inner surface, an open top, and an open bottom having an outer periphery that has a front edge that terminates the front end, a first edge that terminates the first side, a rear edge that terminates the rear end, and a second edge that terminates the second side;

a first frame member attached to the front end of the hopper, the first frame member having a first pair of wheels attached thereto;

a second frame member attached to the rear end of the hopper, the second frame member having a second pair of wheels attached thereto;

an extension extending downwardly from the front edge and that has a bottom periphery with a first portion that extends diagonally downwardly, a second portion that extends generally horizontally, and a third portion that extends diagonally upwardly; and

a skid attached to the rear end, the skid having a first section that is generally parallel with the first portion a second section that is generally parallel with the third portion, joined by a medial portion that is generally parallel with the second portion surface; and

wherein the hopper is adapted to receive concrete therein and deposit the concrete through the open bottom and the extension screeds the concrete so deposited and the skid slip forms the concrete so screeded..

**Claim 11** (amended).

The ditch forming apparatus as in claim 9 further comprising:

a first pair of stanchions slidably attached to the first frame member in spaced apart fashion and spaced apart from the first pair of wheels, the first pair of stanchions capable of being secured in a fixed position relative to the first frame member; and

a second pair of stanchions slidably attached to the second frame member in spaced apart fashion and spaced apart from the second pair of wheels, the second pair of stanchions capable of being secured in a fixed position relative to the second frame member.

**Claim 16** (amended)

The ditch forming apparatus as in claim 9 further comprising [a] an H-shaped baffle removably positioned within the hopper in order to retard the flow of the concrete from the hopper through the open bottom.

**Claim 17** (amended).

A method of forming a ditch comprising the steps of:

placing a pair of coextensive forms on the ground;

providing a ditch forming apparatus having a hopper having, a front end and a rear end joined by a pair of side members, an outer surface, and inner surface, an open top, an open bottom, a first frame member attached to the front end of the hopper, the first frame member having a first pair of wheels attached thereto and a second frame member attached to the rear of the hopper, the second frame member having a second pair of wheels attached thereto, an extension extending downwardly from the open bottom proximate the front end, the extension having a pair of sloped side edges joined by a flat bottom edge, and a skid attached to the rear end, the skid having a pair of sloped side surfaces joined by a flat bottom surface;

placing the first pair of wheels and the second pair of wheels on the pair of forms;

placing concrete into the hopper; and

pulling the ditch forming apparatus along the pair of forms; and

wherein the concrete drains from the hopper through the open bottom and the extension screeds the concrete so deposited and the skid slip forms the concrete so screeded

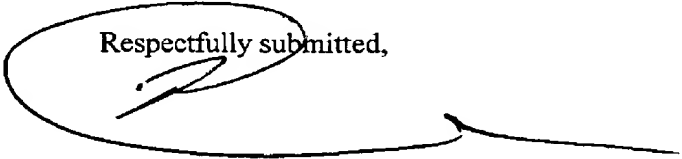
**Claim 19 (amended).**

The method as in claim 17 wherein the ditch forming machine further comprises a first pair of stanchions slidably attached to the first frame member in spaced apart fashion and spaced apart from the first pair of wheels, the first pair of stanchions capable of being secured in a fixed position relative to the first frame member and a second pair of stanchions slidably attached to the second frame member in spaced apart fashion and spaced apart from the second pair of wheels, the second pair of stanchions capable of being secured in a fixed position relative to the second frame member.

**Claim 24 (amended).**

The method as in claim 17 further comprising [a] an H-shaped baffle removably positioned within the hopper in order to retard the flow of the concrete from the hopper through the open bottom.

Respectfully submitted,



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**CERTIFICATE OF TRANSMISSION**

I HEREBY CERTIFY that the foregoing was faxed to the Commissioner of Patents and Trademarks, Art Unit 3671, fax number (703) 305-8623, this 5th day of March, 2003.

Or 703 872 9306



Peter Loffler